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Exhibits

A – Homicide's Book

B – District Attorney's Letter of Opinion

C – (1) CD containing crime scene photographs and crime scene measurements taken by Forensic Identification Specialist 1 David Ozeta

D – (1) CD containing radio traffic

E – Firearms Identification Section, Laboratory Examination Report #K704523 & K544520

Miscellaneous Documents

- (11) Administrative Rights Force/Shooting Investigation form
- Certified letter sent to Witness [redacted]
- Santa Clarita Valley Station Report #915-10370-0648-201 and one photograph showing tattoos on the back of Suspect Hernandez' head taken during the coroner's examination



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOHN K. SPILLANE • Chief Deputy District Attorney
JOSEPH P. ESPOSITO • Assistant District Attorney

SCOTT K. GOODWIN • Director

January 30, 2017

Captain Steven Katz
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Miguel Hernandez
J.S.I.D. File #16-0022
L.A.S.D. File #016-00571-0612-013

Dear Captain Katz:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 14, 2016, fatal shooting of Miguel Hernandez by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

JAMES GARRISON
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Nathan Gillespie, #[redacted]

Hall of Justice
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
(213) 974-3888
Fax: (213) 626-5125
WEBSITE: http://da.co.la.ca.us

MEMORANDUM

TO: CAPTAIN STEVEN KATZ
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Miguel Hernandez
J.S.I.D. File #16-0022
L.A.S.D. File #016-00571-0612-013

DATE: January 30, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 14, 2016, fatal shooting of Miguel Hernandez by Los Angeles County Sheriff's Department (LASD) Deputy Nathan Gillespie. We have concluded that Deputy Gillespie acted lawfully in self-defense.

The District Attorney's Command Center was notified of the shooting at approximately 8:34 p.m., on January 14, 2016. The District Attorney Response Team responded to the location. They were given a briefing regarding the circumstances surrounding the shooting and a walk-through of the scene.

The following analysis is based on investigative reports, audio recordings of interviews, the autopsy report, crime scene diagrams and sketches, photographic evidence, and witness statements submitted to this office by LASD Detectives Daniel Morris and Richard Tomlin. The voluntary statement of Deputy Gillespie was considered as part of this analysis.

FACTUAL ANALYSIS

Deputy Gillespie was working as a patrol officer in a one-man marked patrol vehicle on January 14, 2016. Prior to beginning patrol, he attended a briefing where an assault with a deadly weapon call from January 13, 2016 was discussed. As part of the briefing, he learned that after a road-rage incident, the driver of a two-tone white and tan Lexus with halogen headlights fired a handgun in the direction of another driver.

After the briefing, at approximately 7:45 p.m., Gillespie was travelling westbound on Soledad Canyon Road as part of his patrol. He observed a two-tone white and tan Lexus with halogen headlights that matched the description of the vehicle described in the briefing. As Gillespie observed the vehicle, the driver failed to signal before turning. Gillespie followed the vehicle and

attempted to effectuate a traffic stop using his lights and fog horn. The driver of the Lexus, later identified as Miguel Hernandez, turned on his signal as if to turn into a parking lot entrance of a townhouse, then turned the signal light off and continued proceeding forward. Hernandez turned on his signal light again but failed to turn an additional two or more times.

When Hernandez reached Nathan Hill Road, he turned left (west) and pulled his vehicle over to the north curb line. Gillespie stopped his patrol car offset to the driver's side in close proximity to the rear of the Lexus. Gillespie quickly exited his patrol car with his duty weapon in his right hand, pointed at the Lexus. Gillespie ordered Hernandez to turn off the vehicle engine as Gillespie approached the front bumper of the patrol car.

Hernandez suddenly exited the driver's side door of the Lexus, with only the left side of his body visible to Gillespie. Gillespie ordered Hernandez to show him his hands. Hernandez did not comply. Gillespie could see Hernandez' left hand, but his right hand was concealed and moving in the area of his right hip/waistband. Hernandez was wearing baggy clothing, and had what appeared to be gang tattoos on his head, which was shaved. Hernandez appeared agitated and said something to the effect of, "What the fuck?" Hernandez' appearance, demeanor and actions, as well as the vehicle he was driving, caused Gillespie to believe that Hernandez was the suspect from the shooting the day before.[1]

Gillespie continued to order Hernandez to show him his hands. Hernandez did not comply, and quickly turned towards Gillespie while moving his right hand. Fearing that Hernandez had retrieved a gun and was about to shoot him, Gillespie fired one round from his service weapon, striking Hernandez in the left shoulder.[2] Hernandez fell face-first to the ground. As Gillespie moved to Hernandez to handcuff him, he noted that the windows of the Lexus were tinted. Upon reaching Hernandez, Gillespie placed his knee on Hernandez' back and handcuffed him. Gillespie did not see any object in Hernandez' right hand. Gillespie then radioed for assistance.

The first unit to arrive at the location was Deputy Westerfield. Westerfield assisted Gillespie in searching Hernandez' waistband area for weapons. Finding no weapon in his waistband, Gillespie and Westerfield lifted Hernandez off the ground at which point Westerfield heard something hit the ground. Westerfield and Gillespie recovered a black folding knife that was locked in the open position on the ground under Hernandez' right foot.

Once paramedics arrived to treat Hernandez, Gillespie and Westerfield observed a second individual, later identified as [redacted] seated in the rear passenger seat of the Lexus.[3]

Hernandez was transported to the hospital, where he was later pronounced dead. Deputy Medical Examiner Yulai Wang performed an autopsy on Hernandez on January 23, 2016. Dr. Wang attributed the cause of death to one gunshot wound to the left shoulder which perforated both lungs.[4]

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[1] Subsequent investigation was unable to prove or disprove whether Hernandez was, in fact, involved in the assault the day prior.

[2] An inspection of Gillespie's service weapon confirmed that only one round was fired.

[3] [redacted] He refused to make any statement to investigators on multiple occasions.

[4] Toxicology testing done as part of the autopsy revealed marijuana, amphetamines and methamphetamine in Hernandez' blood samples at the time of his death.

The incident occurred in a residential area. A canvas of the neighborhood produced two witnesses who observed the officer involved shooting.

[redacted] indicated she was upstairs in her bedroom when she heard the police air horn. She looked out of her south-facing window, which overlooks the corner of Shangri-La Dr. and Nathan Hill.[5] [redacted] saw a light colored sedan, followed by a marked sheriff's vehicle. The sheriff's vehicle pulled directly behind the sedan with its lights flashing. [redacted] observed a deputy exit the vehicle and yell, "Turn off the car!" [redacted] heard the deputy issuing additional commands, but was unable to hear what they were. As the deputy issued commands, the driver of the sedan exited his vehicle with the left side of his body facing the deputy. As the driver exited, she heard the deputy saying something in a commanding tone, but was unable to make out what he was saying. [redacted] looked at the deputy at some point and observed that his gun was drawn. [redacted] saw the driver of the sedan standing in front of the deputy for approximately 30 seconds before hearing a gunshot. [redacted] could not see what the driver's hands were doing immediately before the gunshot.

[redacted] stated he was sitting in the patio area of his backyard having a cigarette. He looked to the east through his wrought iron fence and saw a sedan, followed by a black and white police car driving north up Shangri-La Drive at Nathan Hill Road.[6] [redacted] heard the police car sound its air horn, then observed the emergency lights activated. Once the sedan pulled to the curb on Nathan Hill Road, the police vehicle stopped right behind it. A deputy immediately exited the patrol vehicle and took approximately three steps towards the sedan. [redacted] then heard a gunshot, followed by the deputy yelling, "Get on the fucking ground!" three times. [redacted] indicated he was certain he did not hear any commands prior to one shot being fired, but did hear commands after Hernandez was shot. [redacted] did not see the driver of the sedan's actions prior to the gunshot. [redacted] believed Hernandez may have exited the car in an "aggressive" manner which "spooked" Gillespie and caused him to fire his weapon.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also,* CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

[5] Measurements taken from [redacted] bedroom window, which is on the second floor of her home, were [redacted] feet to the front driver's side door of the Lexus and [redacted] feet to the driver's side door of the patrol vehicle.
[6] No formal measurements were taken from [redacted] patio to the sedan or patrol vehicle. The distance is approximately the same as that from [redacted] bedroom window.

"Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety." *People v. Collins* (1961) 189 Cal.App.2d 575, 589. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight....The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In this matter, Hernandez was driving a vehicle with the distinct characteristics of a two-tone color scheme and halogen headlights in the same vicinity where such a vehicle was involved in a shooting. Upon Gillespie attempting to pull the vehicle over, Hernandez feigned pulling over multiple times prior to finally stopping his vehicle. Once Gillespie exited his vehicle, Hernandez exited the driver side of the Lexus unexpectedly, with half of his body and one hand hidden from Gillespie. As Gillespie repeatedly demanded that Hernandez show him his hands, Hernandez did not comply, but instead appeared to be retrieving an item from his right waistband. Given the fact that Hernandez' vehicle appeared to be the one used in a shooting the day before combined with Hernandez' actions, Gillespie feared Hernandez was reaching for a firearm. Gillespie's use of force was thus reasonable under the circumstances. It was only after Hernandez fell to the ground that the object he had in his hand was determined not to be a firearm, but most likely the open knife recovered by his foot.

CONCLUSION

We find that Deputy Gillespie acted lawfully in self-defense when he used deadly force against Miguel Hernandez. We are closing our file and will take no further action in this matter.